

REMARKS

Claims 2-17 have been canceled. Claims 27-33 have been amended. Claims 1 and 18-33 are pending in the application.

The Examiner restricted pending claims 1, 18-33 to one of the following allegedly distinct inventions under 35 U.S.C. § 121:

I. Claims 1, 18-25, drawn to a nutritional or pharmaceutical composition comprising: a)-a protein fraction containing L-serine selected from the group consisting of L-serine, protein or peptides; and b)-an energy metabolism precursor selected from glycocyamine (GA), equivalents thereof, and mixtures thereof, wherein the composition is free of glycine or if glycine is present within the composition, the weight ratio of L-serine to glycine after hydrolysis of the composition is more than 2.7:1.

II. Claims 26-31, drawn to a method for increasing the creatine response within mammalian muscle and methylation reaction capacity in a mammal in need thereof, comprising administering to said mammal an effective amount of the composition according to claim 1.

III. Claim 32, drawn to the method according to claim 11 [sic-it should have been 26] for the stimulation

and/or increase of anabolic processes and/or the providing of an increase of the lean body mass, and/or prevention and/or treatment of muscle catabolism or even cachexia and/or for the improvement of the energy status of tissues and cells.

IV. Claim 33, drawn to the method according to claim 11 [sic—it should have been 26], for the prevention and/or treatment of disorders selected from the group consisting of cancer, neurological disorders, migraine, allergy, insulin resistance which improves glucose tolerance and decreases side effects of diabetes type II, cardiovascular and cerebrovascular disorders, hypercholesterolemia, hypertension, subfertility, uncontrolled inflammation processes, pneumonia, hearing loss, wound healing, gut barrier function and sepsis.

In response, Applicant hereby elects Group I, which encompasses claims 1, and 18-25, with traverse, for prosecution at this time, without prejudice or disclaimer to filing one or more applications directed to the remaining claims.

The Examiner also required that Applicant elect a single species of protein, glycoccyamine, vitamin, food grade carbohydrate, aldehyde, mineral, form of composition and disorder, as well as list all claims readable thereon.

In response, Applicant hereby elects caseinates from milk as the preferred species of protein (claim 1); guanidine acetic acid as the preferred species of glycocyamine (claim 1); folic acid as the preferred species of vitamin (claim 21); maltodextrin as the preferred species of food grade carbohydrate (claim 22); magnesium as the preferred species of mineral (claim 24); powder as the preferred form of composition (claim 25); and neurological disorders as the preferred form of disorder (claim 33). Regarding the required election of a preferred species of aldehyde under claim 23, Applicant maintains that aldehydes, generally, are the preferred species and that this election sufficiently fulfills the requirement. These species are elected with traverse for prosecution at this time without prejudice or disclaimer to filing one or more applications directed to the remaining species.

The Examiner states that the technical feature of Group I is a nutritional or pharmaceutical composition comprising L-serine and glycocyamine, which allegedly is not a contribution over the prior art shown by U.S. 4,148,912 issued to Vincent et al. Applicant contends that the claims of Vincent, which disclose a method of treating acid gastric hypersecretion and protecting the gastric mucosa and liver via a composition of p. chlorohippuric acid or a salt thereof with a mineral or organic base which may or may not contain either serine or glycocyamine,

are entirely unrelated and irrelevant to the claims of the present application.

In addition to the above, Applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. § 121, restriction may be required if two or more independent and distinct inventions are claimed in one application.

The inventions of Groups I-IV are not independent and are not distinct. Under M.P.E.P. § 802.01, "independent" means there is no disclosed relationship between the subject matter claimed. The inventions of Groups I-IV are related. The inventions all relate to a composition wherein a protein fraction containing L-serine is combined with glycocyamine to create an increase in creatine which will correspondingly result in an increase in energy and an overall improvement of health. Applicant therefore maintains that the inventions of Groups I-IV are not independent, and restriction is not proper.

Furthermore, under M.P.E.P. § 803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there

must be a serious burden on the Examiner if restriction is not required.

Applicant respectfully submits that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Groups II-IV would not require a serious burden once the prior art relevant to Group I has been identified.

Therefore, there would be no serious burden on the Examiner to examine groups I-IV together in the subject application. Hence, the Examiner must examine these groups on the merits.

Applicant submits that he has addressed and overcome all of the pending objections and rejections stated in the Office Action. Applicant requests an action on the merits at the Examiner's earliest convenience.

Respectfully submitted,

By: 

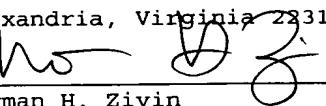
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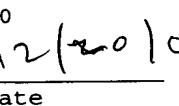
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